

Internal Revenue Service
Regional Commissioner

Department of the Treasury

Date: 8 JUN 1987

CERTIFIED MAIL

No. [REDACTED]

Employer Identification Number:

Form Number:

Tax Years:

Key District:

Cincinnati

Person to Contact:

Contact Telephone Number:

Dear Sir or Madam:

This is a final adverse determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code.

Our adverse determination was made for the following reason(s):

You do not qualify for exemption from Federal income tax under the provisions of Section 501(c)(3) of the Code because you are operating primarily to promote the economic revitalization of the downtown Akron, Ohio business district. You are not operating exclusively for charitable purposes as described under Section 501(c)(3) of the Code.

Contributions to your organization are not deductible under Code section 170.

You are required to file Federal income tax returns on the form indicated above. Based on the financial information you furnished, it appears that returns should be filed for the above years. You should file these returns with your key District Director, EP/EO Division, within 30 days from the date of this letter, unless a request for an extension of time is granted. Processing of income tax returns and assessment of any taxes due will not be delayed because you have filed a petition for declaratory judgment under Code section 7428. You should file returns for later tax years with the appropriate service center shown in the instructions for those returns.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the district court of the United States for the District of Columbia must be filed within 90 days from the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment.

(over)

Cleveland Appeals Office
P.O. Box 99189
Cleveland, Ohio 44199

Letter 1371(RO) (1-80)

We will notify the appropriate State officials of this action, as required by Code section 6104(c).

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

[REDACTED]
[REDACTED]
Chief, Appeals Office

cc: [REDACTED] [REDACTED] [REDACTED]

Internal Revenue Service

Department of the Treasury

District
Director

P.O. Box 2508, Cincinnati, OH 45201

Person to Contact:

Telephone Number:

Refer Reply to:

EP/EO

Date: JUL 23 1985

Dear Sir or Madam:

- We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As our organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892 (Rev. 7-83), "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7426(b)(2) of the Internal Revenue Code provides in part that:

A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely yours,

[REDACTED]
[REDACTED]
District Director

Enclosures: 3

Enclosure I

Information submitted with your application shows that you were incorporated [redacted] in the State of [redacted]. Your articles of incorporation state that you were formed for the purpose of developing the area adjacent to [redacted] in downtown [redacted] by purchasing real estate and by developing, constructing, and marketing housing thereon and to do any and all acts that nonprofit corporations formed under the laws of [redacted] may legally do.

In your application you stated that the City of [redacted] has witnessed the decline of its downtown area as job losses and migration have occurred from the City as a whole. Your purpose is to enhance the vitality of [redacted]'s downtown business district and respond to [redacted]'s downtown problems. Your organization was formed as part of an overall Downtown Development Plan. A major element of the Plan is the enhancement of the vitality of the central business district with new housing and new retail trade. Your objectives are as follows:

1. Introduce ownership housing to [redacted]'s downtown - you have proposed the development of [redacted] units of housing in downtown [redacted] along the historic [redacted]. The multi-family building construction will feature three- and four-story townhouse type structures (luxury condominiums) oriented around private courtyards and be marketed to attract the younger professional. The average unit sale price is targeted to be \$[redacted]. An Urban Development Action Grant issued to the City of [redacted] will be used to provide low-interest second mortgage loans to the unit buyers. Issue One Mortgage Bond money has also been set aside. These two financing sources will provide fixed rate mortgage loans with blended rates of approximately 10.5 percent. At present this is your only function.
2. Stimulate the interest and market necessary for downtown reinvestment - the community would benefit with an enhanced downtown. Various groups who have need to work, shop, and do business in the downtown area would be beneficiaries of increased downtown investment because of the improved facilities and economic climate.
3. Support the retail and office functions of the central business district - retail and office establishments would benefit from the increased activity in the downtown area. Future residents would benefit by proximity to goods and services offered by these establishments. Employees of the retail and office establishments would have a choice of living within walking distance of their jobs.

Enclosure I con't

- [REDACTED]
4. Improve an underutilized area of the central business district with an aesthetic and compatible development - Future residents would benefit from a pleasing residential environment. Neighboring land uses would benefit from an aesthetically pleasing functional development resulting in an increased level of property values. This activity will be conducted through the implementation of an Urban Renewal Program designed to redevelop the site from vacant land, vacant buildings, parking lots, and miscellaneous land uses into a planned unit development residential community.
 5. Provide new ownership housing alternatives to [REDACTED] residents - both existing and future residents would have a choice of buying a dwelling in the downtown area near major employment, retail, service, and entertainment facilities.
 6. Provide through the Urban Development Action Grant (UDAG) loan repayment, funds for future community development activities - as funds are repaid to the City of [REDACTED], they will be eligible for use by the City in much the same way as Community Development Block Grant funds and can be used for housing rehabilitation, economic development, social services, neighborhood improvements, etc.
 7. Create over [REDACTED] construction jobs and support the increase in retail trade necessary for the continued retention of [REDACTED] jobs at the downtown [REDACTED]'s department store - the housing project is expected to generate more activity in this section of downtown, hopefully resulting in an increased level of trade at [REDACTED]'s Department Store. The construction of the housing project will create over [REDACTED] construction jobs. [REDACTED] will be responsible for the construction, marketing, and overall management of the housing project.

Individuals will purchase the housing units from your organization. You will not provide financing of the units. Financial support will include Federal Grants, interest income, property tax excrow payments, and income from the sale of property. Expenditures will include administrative costs, interest expense, and costs related to property acquisition.

Enclosure I don't

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Regulations states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(d)(2) of the Regulations states that the term charitable is to be understood in its "generally accepted legal sense." Charity includes only those things that fall within the legal definition of charity. Even though an organization may operate for nonprofit, it must also operate for charitable purposes.

Rev. Rul. 76-419, 1976-2 C.B. 146, provides that a nonprofit organization that purchases land in an economically depressed community, converts the land into an industrial park, and encourages industrial enterprises to locate new facilities in the park in order to provide employment opportunities for low income residents of the area is operated exclusively for charitable purposes and qualifies for exemption under section 501(c)(3) of the Code. The Revenue Ruling stated that pursuant to the terms of Public Law 90-222, the area in which the organization is active has been identified as such an area by appropriate governmental authorities. It has a high ratio of unemployed and underemployed low-income people and is an area of urban blight consisting primarily of junk yards and vacant land with little industry. Tenants are required by their leases with the organization to hire a significant number of presently unemployed persons in the area and the training opportunities and hiring of the underemployed was held to not only relieve poverty but to lessen neighborhood tensions arising from the lack of local job opportunities. Further, the creation of an industrial park in a blighted area combats community deterioration.

Rev. Rul. 77-111, 1977-1 C.B. 144, provides, in part, that an organization whose purpose is to revive retail sales in an area of economic decline by constructing a shopping center does not qualify for exemption under section 501(c)(3) of the Code. The organization's activities were held to benefit

Enclosure I con't

the stores located in the shopping center without a counterbalancing benefit to, e.g., minority groups traditionally excluded from management or ownership of business enterprises or without bringing in businesses that would only enter that particular area because of the availability of the shopping center.

The information you submitted with your application indicates that your activities will increase the tax base of the City of [REDACTED] (thus generating more funding for public services). You have not shown that the area is a depressed area, nor have you shown that new job opportunities will be created or that new job opportunities will primarily benefit under-employed, unemployed or minorities. Your activities are geared to enhance the economic climate of downtown [REDACTED].

Thus, you do not appear to alleviate any of the conditions mentioned in the above noted revenue rulings, which show how, in certain limited cases, assisting commercial or industrial organizations may primarily serve "charitable" purposes. Accordingly, you neither relieve the poor, distressed and underprivileged, nor do you combat community deterioration or lessen neighborhood tensions. Therefore, you do not qualify for exemption from Federal income tax under section 501(c)(3) of the Code.